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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SYLVIE GAUTHIER and GEORGE TSANGARIDES

Appeal 2009-012846
Application 10/762,104
Technology Center 1700

Before EDWARD C. KIMLIN, CHUNG K. PAK, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

This is an appeal from the final rejection of claims 1-9. Claims 10-20 have been withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 is illustrative:

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1. A heat and pressure consolidated laminate, comprising in superimposed relationship:

a decorative layer consisting essentially of a leather material;

a substrate, having a first surface and a second surface opposite one another;

an underlay layer, containing one or more cellulosic sheets impregnated with a thermosetting resin, the underlay layer disposed between the leather decorative layer and the first surface of the substrate;

wherein the decorative layer consisting essentially of a leather material is bonded to the underlay layer along a surface of the decorative layer by thermosetting resin migrated from the underlay layer; and

a backer layer containing one or more cellulosic sheets impregnated with a thermosetting resin, the backer layer disposed adjacent the second surface of the substrate.

The Examiner relies upon the following references as evidence of obviousness (Ans. 3):

Scher	3,700,537	Oct. 24, 1972
Hiers	4,132,821	Jan. 02, 1979
Schmoock	5,344,692	Sep. 06, 1994
Nishi	5,534,327	Jul. 09, 1996
Schlup	5,811,122	Sep. 22, 1998
Ungar	6,440,538 B1	Aug. 27, 2002
Takeuchi	6,558,799 B2	May 06, 2003
Gauthier	7,179,538 B2	Feb. 20, 2007

Appellants' claimed invention is directed to a heat and pressure consolidated laminate comprising a decorative layer on an underlay layer which is on the first surface of a substrate. A backer layer is disposed adjacent the second surface of the substrate. The decorative layer consists

essentially of a leather material. The underlay layer contains one or more cellulosic sheets impregnated with a thermosetting resin.

Claims 1-9 stand rejected on the ground of non-statutory obviousness-type double patenting over claims 1-7 of U.S. 10/762,103 in view of Scher. Claims 1-9 also stand rejected on the ground of non-statutory obviousness-type double patenting over claims 1-5 of U.S. 7,179,538, considered alone, or in view of Hiers. The appealed claims also stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 1-3 and 5 over Ungar in view of Nishi,
- (b) claim 4 over Ungar in view of Nishi and Nelson,
- (c) claims 1-3 and 5 over Scher in view of Schlup, or Schmooch, or Hiers or Nishi,
- (d) claims 6-8 over Scher in view of Schlup, or Schmooch, or Hiers, or Nishi,
- (e) claims 4 and 9 over Scher in view of Schlup, or Schmooch, or Heirs, or Nishi, further in view of Takeuchi.

Appellants have not separately argued any particular claim on appeal. Accordingly, with respect to the § 103 rejections, all the appealed claims stand or fall together.

Appellants have not contested the obviousness-type double patenting rejection over claims 1-7 of U.S. 10/762,103 in view of Scher. Accordingly, we will summarily affirm this rejection. We note that the '103 application has gone to issue and has been assigned a patent No., U.S. 7,745,012.

We will not sustain the obviousness-type double patenting rejection of claims 1-9 over claims 1-5 of US '538, considered alone, or in view of Hiers. While we agree with the Examiner that the claimed backer layer

would have been obvious over the more specific flexible backing of '538, the Examiner has not explained why it would have been obvious to modify the laminate of US '538 by including the claimed underlay layer and also the claimed substrate in combination with a backer layer.

We will also not sustain the Examiner's § 103 rejections over Unger in view of Nishi and Unger in view of Nishi and Nelson. Unger discloses an abrasion resistant laminate comprising a wear-resistant layer 5 that includes an overlay layer 6, a decorative layer 7, and a core layer 8. The decorative layer 7 is printed or color paper. As appreciated by the Examiner, Unger does not teach that the decorative layer consists essentially of a leather material. The Examiner reasons, however, that it would have been obvious for one of ordinary skill in the art to substitute the leather/resin sheet or film of Nishi for the printed paper layer of Unger to obtain the good touch and grip properties taught by Nishi. The Examiner, however, has not addressed, let alone refuted, the argument put forth by Appellants that since Unger seeks to provide an abrasion resistant laminate that has a wear-resistant surface, and is water proof or water repellant, one of ordinary skill in the art would not have substituted the leather composition of Nishi, which has poor wear resistant properties and is not water proof. In the absence of a reply by the Examiner, Appellants' reasonable argument stands unrebutted. The Examiner's additional citation of Nelson for the rejection of claim 4 does not alleviate this deficiency.

We will sustain the Examiner's § 103 rejection of claims 1-9 to the extent it is based upon a combination of Scher and Nishi. Appellants have presented no persuasive reason why it would have been non-obvious for one of ordinary skill in the art to substitute the leather/resin film or sheet of Nishi

for the embedment sheet 18 in Scher's high pressure laminate. As pointed out by the Examiner, Scher teaches that the embedment layer may be of almost any construction, and we agree with the Examiner that it would have been obvious to select the leather sheet or film of Nishi as the embedment layer to provide a pleasing, leather appearance.

We do not subscribe to Appellants' argument that Nishi teaches away from a decorative layer that consists essentially of a leather material. As acknowledged by Appellants, Nishi expressly teaches that the leather/resin composition may comprise as much as 90% leather, and Appellants have not established that the 10% of non-leather components in Nishi's leather composition materially affect the basic nature of the composition as a leather material. Likewise, even for the exemplified compositions of Nishi which comprise 60% of powdered leather, Appellants have not demonstrated that the components comprising the other 40% materially affect the basic nature of the composition as a leather material. Also, while Nishi teaches that if the amount of leather exceeds 90% by weight the film or sheet becomes fragile, we find no merit in Appellants' argument that the reference teaches away from a decorative layer consisting essentially of a leather material. Appellants have not established that the claimed leather material must comprise leather in an amount greater than 90%, nor, again, have Appellants demonstrated that the 10% non-leather components of Nishi's composition materially affect the basic nature of the composition as a leather material.

Appellants have not set forth separate, substantive arguments for the separate rejections of claims 6-8 over Scher in view of Nishi and claims 4 and 9 over Scher in view of Nishi and Takeuchi.

As a final point, we note that Appellants base no argument upon objective evidence of non-obviousness, such as unexpected results.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

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